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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Eric G. Suder

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EXAMINER

NGUYEN, HANH N

ART UNIT

PAPER NUMBER

2616

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/072,343	Applicant(s) SUDER ET AL.	
	Examiner Hanh Nguyen	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Appeal Brief filed on 11/28/07.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-46 is/are pending in the application.

 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) 35-46 is/are allowed.

6) ☒ Claim(s) 1-12, 14-34 is/are rejected.

7) ☒ Claim(s) 13 is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

In view of the The Appeal Brief filed on 11/28/07, PROSECUTION IS HEREBY REOPENED. A new ground of Rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Feild Lynn/

Supervisory Patent Examiner, Art Unit 2616

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 14-27, 30-34, are rejected under 35 USC 103(a) as being unpatentable over Murphy (US pat. 6,856,613 B1) in view of Sen et al. (US Pat. 6,330,451 B1).

In claims 1, 4-6, 8, 16-18, 22, 26, 27, 30, 33 Murphy discloses in fig.1, col.2, line 50 to col.3, line 35; an information system (a communication network 12) comprising IP network 30 (claims 4, 5 17, 18; TCP/IP; packet switch network); a first telephone coupled to a first network device (claim 6, 26, 27; VOIP telephone 14C is coupled to computer 14D). The VOIP phone 14C provides audio packet throttling as well as packet throttling performed by packet throttle 36 shown in gateway 32, 20 (col.3, lines 10-15; a circuitry in VOIP phone 14C performing audio packet throttling).

Murphy does not disclose the telephone device includes a circuitry for throttling data sent from the first network device and the telephone coupled to a modem.

Sen et al. discloses an information handling system (a wireless communication system shown in fig.2) comprising: a first telephone device (telephone 114) coupled to a first network device (coupled to PC 116). Sen et al discloses in fig.2, col.6, line 32 to col.7, line 10; that when data transmission between subscriber 130 and computer 116 share available bandwidth of voice transmission between subscriber 124 and telephone 114, a delay element 105 cause the computer 116 to send data at a lower rate to increase available bandwidth for voice communication (a circuitry throttling data sent from the first network device).

In VOIP network, having a modem coupled to the IP telephone is well-known in the art. Applicant is directed to see claims 28 below using Fuller et al. that teaches the use of modem coupled to IP telephone. Therefore, it would have been obvious to one ordinary skilled in the art to apply the teachings of Sen et al. into Murphy by implementing the delay element 105 (see Sen et al., fig.2) into the voip phone 14C of Murphy in order to reduce data rate transmission from Internet computer 17 rather than reduce audio packet. The motivation is to enhance the QOS during transmission of voice and data in VOIP network. The users in VOIP network do not suffer spoken sound by increasing the rate of voice transmission.

In claim 7, 19, 23, 24, Murphy discloses the throttling circuitry reduces a future amount of data from being transferred from the network device if the amount of data exceeds a predetermined threshold (col.3; lines 37-42; packet throttle 36 monitors available space in buffer 24 to see if the available space in the buffer is too low and fig.2, col.5, lines 30-35; buffer monitor 48 monitors the current free queue 48 to determine when a throttle condition exists).

In claims 20 and 21, Murphy discloses monitoring audio information comprising monitoring a predetermined level within a jitter buffer is addressed in claims 1, 7, 19, 23, 24.

In claim 14, in order to meet the missing the required limitations in Murphy, Sen et al. discloses data from network device is sufficiently throttled so that the first telephone device can communicate realtime multimedia signals to and from modem and (col.5, lines 30-35; data is managed by throttling /processing at a lesser data rate

so that sufficient bandwidth is provided to service voice communication in realtime manner (see col.5, lines 5-10). Therefore, it would have been obvious to one ordinary skilled in the art to apply the teachings of Sen et al. into Murphy to throttle sufficient bandwidth in multimedia transmission so that voice is prioritized for realtime transmission.

IN claims 9, 10, Murphy discloses monitoring circuitry (packet throttle 36; fig.1) comprising a jitter buffer (buffer 24; fig.1; col.3, lines 37-45) where the predetermined threshold is a predetermined level within the jitter buffer (space in buffer 24 is too low).

In claims 3, 15, Murphy discloses telephone, first network device, router are coupled to each other via network (see fig.1; VOIP phone 14C, endpoint 14D, voice gateway 32 are coupled to IP network 30).

In claims 11, 12, Murphy discloses the throttling circuitry adjusts its level of throttling of audio in response to the mode level (throttling the rate of VOIP packet 26 by varying number of samples of audio bit stream 18 (see col.3, lines 30-35).

In claims 25, Murphy discloses the network device is a work station (endpoint 14D; fig.1) and the telephone device is a digital telephone (endpoint 14B). see fig.1, col.2, lines 50-65.

In claims 31 and 34, Murphy discloses jitter buffer temporarily stores information (buffer 24, see fig.2, col.3, lines 62-67; packets 45 is stored in current free queue 52 of buffer 24 and output via IP interface 50 to IP network 30).

In claim 32, Murphy discloses IP telephone with level 2 switching circuitry (switching path 51, col.5, lines 20-27).

Claims 28, 29 are rejected under 35 USC 103(a) as being unpatentable over Murphy (US pat. 6,856,613 B1) in view of Sen et al. (US Pat. 6,330,451 B1), and further in view of Fuller et al. (US Pat. 7,203,186 B1).

In claims 28, 29, as disclosed in the rejection of claim 1, the combination of Murphy and Sen et al. discloses voice and data communication to a WAN (IP network), but does not disclose a modem communicates the data to the WAN. Fuller et al. discloses in fig.1, modem 22 coupled to IP phone 18 via a hub (router) and Internet computer 17 to communicate data to Internet 14. Therefore, it would have been obvious to transmit multimedia data comprising voice, data in Murphy with data being throttled for increasing the rate of voice communication to enhance qos in VOUIP network.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 35-46 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Li (US Pat. 5,815,503);

Lai (US Pat. 7,269,159 B1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Lynn Feild , can be reached on 571 272 2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Hanh Nguyen/
Primary Examiner, Art Unit 2616

